

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Lori Roth

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 David L. Deratzian, Hahalis & Kounoupis, PC
 20 East Broad Street, Bethlehem PA 18018
 610-865-2608

DEFENDANTS

Air Products and Chemicals

County of Residence of First Listed Defendant Lehigh County
(IN U.S. PLAINTIFF CASES ONLY)
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
 THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	PERSONAL PROPERTY	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 370 Other Fraud	Labor	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 371 Truth in Lending	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	Habeas Corpus:		<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input checked="" type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition)		
		<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 12001, et seq.

VI. CAUSE OF ACTION

Brief description of cause:
Termination because of disability

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

06/16/2014

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 6133 Woodledge Drive, Orefield, PA 18069

Address of Defendant: 7201 Hamilton Blvd., Allentown, PA 18195

Place of Accident, Incident or Transaction: 7201 Hamilton Blvd., Allentown, PA 18195
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes No

CIVIL: (Place ✓ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All other Federal Question Cases
(Please specify) _____

B. *Diversity Jurisdiction Cases:*

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
(Please specify) _____
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases

I, David L. Deratzian, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 6/16/2014

49841

Attorney-at-Law

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 6/16/2014

49841

Attorney-at-Law

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LORI ROTH, : **CIVIL ACTION**
Plaintiff, :
: **No.**
vs. :
:
AIR PRODUCTS AND CHEMICALS, INC. :
Defendants : **JURY TRIAL DEMANDED**

COMPLAINT

I. PRELIMINARY STATEMENT

This is an action for an award of damages, declaratory and injunctive relief, attorney's fees and other relief on behalf of Plaintiff, Lori Roth (hereinafter "Roth" or "Plaintiff"). Plaintiff was an employee of the Air Products and Chemicals, Inc. (hereinafter "Air Products" or "Defendant"), who has been harmed by the disability-based harassment, discrimination and retaliatory practices as well as other improper conduct by Defendants.

This action is brought under the Americans with Disabilities Act ("the ADA") as amended, and Pennsylvania common law.

II. JURISDICTION AND VENUE

1. The original jurisdiction of this Court is invoked, and venue is in this District, pursuant to Title 28 U.S.C. §§1331, 1391, and the claim is substantively based on the Americans with Disabilities Act, 42 U.S.C. § 12001, *et seq.*
2. The Supplemental Jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. § 1337, to consider Plaintiff's claim arising under the Pennsylvania Human Relations Act, 43 Pa. C. S. A. §951 *et seq.*, and under Pennsylvania common law.

3. All conditions precedent to the institution of this suit have been fulfilled. As to the ADA claims, Plaintiff has invoked the procedure set forth in the ADA and has received a Notice of Right to Sue as required by that statute. On November 15, 2011, Plaintiff filed a Charge of Discrimination with the EEOC, which was cross-filed with the Pennsylvania Human Relations Commission against Air Products and Chemicals, Inc. alleging, *inter alia* disability based employment discrimination and retaliation. On April 23, 2014, a Notice of Right to Sue was issued by the Equal Employment Opportunity Commission.
4. This action has been filed within ninety (90) days of receipt of said Notice.
5. More than one year has elapsed since the filing with the PHRC.

III. PARTIES

6. Plaintiff, Lori Roth , is an adult female citizen and resident of the Commonwealth of Pennsylvania, residing in Orefield, Pennsylvania. Plaintiff, at all times pertinent hereto, was employed by Defendant, Air Products , as a Senior Solutions Analyst.
7. Defendant Air Products and Chemicals, Inc., is a domestic corporation, with a principal place of business in Allentown, Pennsylvania. Air Products operates the facility at which Plaintiff was employed.
8. At all times relevant herein, Plaintiff was an “employee” as defined by the Americans with Disabilities Act, 42 U.S.C. § 12111(4), and is subject to the provisions of said Act.
9. At all times relevant herein, Plaintiff was “disabled” as defined by the Americans

with Disabilities Act, 42 U.S.C. §12102 (2), and is subject to the provisions of said Act.

10. At all times relevant herein, Plaintiff was a “qualified individual with a disability” as defined by the Americans with Disabilities Act, 42 U.S.C. § 12111(8), and is subject to the provisions of said Act.
11. At all times relevant herein, Air Products was an “employer” and “person” as defined by the Americans with Disabilities Act, 42 U.S.C. § 12111(5)-(7) and is subject to the provisions of said Act.
12. At all times relevant hereto, Defendants acted by and/or failed to act by and through the conduct of their officers, managers, agents and employees, all acting within the scope and course of their employment.
13. At all relevant times herein, Defendants knew, or had reason to know, of the actions and inaction alleged herein and/or have personally participated in some of said actions and are ultimately responsible for same.

IV. CAUSES OF ACTION

14. At all time material hereto, Plaintiff exhibited exemplary work habits and performance and had at all times fulfilled all of the duties and obligations commensurate with that employment.
15. At all times material hereto, Plaintiff was a qualified individual with a disability, in that she had a record of alcoholism, a permanent and/or chronic condition.
16. At all times material hereto, Plaintiff had the status of a “recovering alcoholic,” in that she was not using alcohol or other intoxicating substances.

17. In addition, as set forth below, Plaintiff was “disabled” as that term is defined by the ADA in that Defendant wrongly regarded her being addicted to alcohol or other intoxicating substances, and wrongly regarded as actively using such substances.
18. On or about October 10, 2010, Plaintiff requested and was granted leave for the purpose of entering a voluntary alcohol rehabilitation program in December 2010.
19. On or about December 14, 2010, pursuant to Defendant’s Drug and Alcohol testing program, Plaintiff was required to submit a sample for testing, which she refused.
20. Under the terms of this Agreement, Plaintiff was subject to immediate termination for a subsequent positive test.
21. Plaintiff entered the rehabilitation program on December 17, 2010, and has not ingested any alcoholic beverage since that date.
22. Pursuant to Defendant’s program, Plaintiff was placed on a “Controlled Substance and Alcohol Misuse Program Test Positive Agreement,” which she was required to sign while undergoing rehabilitation on December 22, 2010.
23. On May 26, 2011, Plaintiff was in a meeting with other Air Products employees for most of the morning and all afternoon.
24. At or about 4:30 p.m., Plaintiff was ordered to submit to a “random alcohol test.”
25. Plaintiff believes that although the test was referred to as “random,” it was in fact targeted at her.

26. Because Plaintiff had been in this meeting for virtually the entire work day, she did not and could not have ingested any alcohol, a fact known to her supervisors and management at Air Products.
27. Nonetheless, Plaintiff submitted to testing.
28. When she presented for testing at an outside test facility, the technician opined that Plaintiff was not intoxicated, and stated “Why are you here – you are not drunk,” further indicating that this was not a “random” test.
29. At the time of the test, Plaintiff was using a cough drop, and the technician took a breath test while Plaintiff had the cough drop in her mouth.
30. Knowing that this invalidated the test, the technician took another sample, and noted the use of the cough drop on the results form.
31. This note was for the purpose of communicating to Air Products that the test had indicia of invalidity.
32. Air Products employs individuals with specific health expertise for the purpose of receiving these reports, and who knew or should have known of the well-documented effects of cough drops on breath alcohol testing.
33. Nonetheless, on the basis of the invalid results reported by its agent, Defendant formed an erroneous belief that Plaintiff has actively using alcohol, and terminated her employment on May 31, 2011.
34. The termination of Plaintiff’s employment under these circumstances constitutes a violation of the ADA, and one committed in reckless disregard of the federally protected right enjoyed by Plaintiff under the ADA, namely a failure to

accommodate a disability and/or discrimination on the basis of disability.

35. Defendant Employer was responsible and liable for the conduct of its principals, employees and agents for subjecting Plaintiff to a discriminatory employment and work environment, and for failing to protect Plaintiff from unlawful conduct.
36. As a direct result of the violation of the ADA by Defendant's supervisory employees, Plaintiff was deprived of her employment with Defendant.
37. As a direct result of Defendants' conduct, Plaintiff has been irrevocably damaged.
38. As a direct result of Defendants' conduct, Plaintiff has suffered and continues to suffer severe emotional, psychological and physical distress.
39. As a direct result of Defendants' conduct, Plaintiff's career, professional and job opportunities have been impaired and damaged and she has suffered a loss of earnings and earning capacity.

COUNT I
PLAINTIFF vs. AIR PRODUCTS
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

40. Paragraphs 1 through 39 inclusive, are incorporated by reference as if fully set forth at length herein.
41. At all times relevant herein, Plaintiff was a qualified person with a disability in that :
 - a. She has an actual serious medical condition, and a record of a serious medical condition, that significantly limited her in one or more major life activities, which condition persisted throughout her employment with Defendant until the date of her termination, and

which persists to this date;

- b. Was wrongly regarded as to the nature and extent of the disability as set forth above.

42. Plaintiff was able to perform all of the essential functions of her position without accommodation.

43. By reason of the conduct set forth above, Defendant intentionally, knowingly and purposefully violated the Americans with Disabilities Act by invidiously discriminating against the qualified Plaintiff.

44. As a direct result of Plaintiff's disability and record of disability, and Defendant's erroneous perception of her disability, Defendant terminated Plaintiff's employment.

COUNT II
PLAINTIFF vs. AIR PRODUCTS
VIOLATION OF THE PENNSYLVANIA HUMAN RELATIONS ACT

45. Paragraphs 1 through 44 inclusive, are incorporated by reference as if fully set forth at length herein.

46. Air Products, by and through the acts of their management personnel and/or principals, including but not limited to the Individual Defendants, discriminated against Plaintiff because of her disabling condition and/or a history of a disability and/or their erroneous perception of her disability, and Defendant has condoned and ratified the wrongful conduct of its supervisors and acts of retaliation against the Plaintiff.

47. As a result of the acts of the Defendant, the Plaintiff has been deprived of the

ability to work for Defendant.

48. The actions of the Individual Defendants as set forth above were in furtherance of, advanced a common purpose with, and aided and abetted the discriminatory conduct of Defendant.

V. PRAYER FOR RELIEF

49. Plaintiff repeats the allegations of paragraphs 1 through 48 of this Complaint as if set forth at length herein.

WHEREFORE, Plaintiff requests this Court to enter judgment in her favor and against Defendant and requests that this Court:

- a. Exercise jurisdiction over her claims;
- b. Award traditional tort remedies such as compensatory damages, pain and suffering, physical and emotional distress, economic loss, and time loss;
- c. Issue declaratory and injunctive relief declaring the above-described practices to be unlawful, and enjoining their past and continued effects;
- d. Order Defendants to compensate Plaintiff with a rate of pay and other benefits and emoluments to employment, to which she would have been entitled, had she not been subject to unlawful discrimination;
- e. Order Defendants to compensate Plaintiff with an award of front pay, if appropriate;
- f. Order Defendants to compensate Plaintiff for the wages and other benefits and

emoluments of employment lost, because of their unlawful conduct;

- g. Order Defendants to pay to Plaintiff compensatory damages for future pecuniary losses, pain, suffering, inconvenience, mental anguish, loss of employment and other nonpecuniary losses as allowable;
- h. Order Defendants pay to Plaintiff pre and post judgment interest, costs of suit and attorney and expert witness fees as allowed by law;
- i. Award such other relief as is deemed just and proper.

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable.

HAHALIS and KOUNOUPIS, P.C.

By: /s/ 
DAVID L. DERATZIAN, ESQUIRE
20 East Broad Street
Bethlehem, PA 18018
(610) 865-2608

Date: June 16, 2014